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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
v.	:	COMPLAINT
	:	
CHUNG SHING MEATS, INC., a/k/a NEW	:	19 Civ. 11749
CHUNG HING MEATS, INC., MIAO HE FENG,	:	
YIU KWAN CHEUNG, WING HONG CHEUNG,	:	
and TIAN LUN FENG,	:	
	:	
Defendants.	:	
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Plaintiff, the United States of America (the “United States”), by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, alleges for its complaint against defendants Chung Shing Meats, Inc. (“Chung Shing”), Wing Hong Cheung, Miao He Feng, Yiu Kwan Cheung, and Tian Lun Feng (collectively, “Defendants”) as follows:

INTRODUCTION

1. The Federal Meat Inspection Act (the “FMIA”) and the Poultry Products Inspection Act (the “PPIA”) protect the public health by imposing strict requirements on food

suppliers regarding the inspection, preparation, transportation, and sale of meat and poultry products. These requirements enable American consumers to have confidence that the meat and poultry they purchase and consume is wholesome and unadulterated. In the event that food safety issues are discovered, the labeling and packaging requirements allow public health officials to trace problems to their source.

2. Defendants have repeatedly violated the FMIA and PPIA at their retail store in Manhattan. They routinely prepare and sell meat and poultry products without meeting the minimum federal meat inspection and identification requirements of the FMIA and the PPIA, including by misbranding or repackaging meat and poultry products without the marks of federal inspection. Since August 20, 2007, the U.S. Department of Agriculture (“USDA”) has identified FMIA and PPIA violations by Defendants that include selling uninspected or misbranded roast pork, pork chops, roast ducks, beef brisket, Silkie chickens, and other beef, poultry, and pork products. In all, USDA’s inspections have uncovered over four hundred pounds of meat products in violation of the FMIA and PPIA.

3. USDA has repeatedly demanded Defendants that cease their violations, with no success. Defendants’ ongoing conduct creates risks to the public health and undermines the protective schemes of the FMIA and PPIA. Accordingly, the United States brings this civil action against Defendants to enjoin Defendants from committing further violations of the FMIA and the PPIA, and to seek disgorgement of profits received in these unlawful transactions.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 21 U.S.C. § 467c, 21 U.S.C. § 674, and 28 U.S.C. §§ 1331, 1337, and 1345.

5. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims in this action occurred in this district, and Defendant Chung Shing has its principal place of business in New York, New York, within the Southern District of New York.

THE PARTIES

6. Plaintiff is the United States of America, on behalf of its agency, the United States Department of Agriculture (the “USDA”).

7. Defendant Chung Shing is a wholesale and retail distributor of meat and poultry products, with a retail store and principal place of business located at 19 Catherine Street, New York, New York 10038. It has also operated under the name of New Chung Hing Meats, Inc.

8. Defendant Wing Hong Cheung is the President of New Chung Hing Meats, Inc..

9. Defendant Miao He Feng is the former President of Chung Shing.

10. Defendant Yiu Kwan Cheung is the present or former Vice President of Chung Shing.

11. Defendant Tian Lun Feng is the present or former Manager of Chung Shing.

12. Defendants are and have been engaged in the business of preparing and selling, among other things, meat and poultry food products in the State of New York and within the jurisdiction of this Court.

STATUTORY AND REGULATORY BACKGROUND

The FMIA and Meat Regulation

13. The FMIA grants the Secretary of Agriculture the power to regulate and inspect meat and meat products distributed in interstate or foreign commerce. *See* 21 U.S.C. §§ 602-604, 615. Additionally, the Secretary of Agriculture may designate meat slaughter and processing operations and transactions wholly within a state governed by Titles I and IV of the FMIA. *See* 21 U.S.C. § 661(c)(1); 9 C.F.R. § 331.2. The Secretary has so designated New York. 9 C.F.R. § 331.2.

14. *Inspections.* Section 3 through 6 of the FMIA requires inspectors to conduct both *ante-mortem* and *post-mortem* inspections of meat in each official establishment processing meat or meat products for commerce. *See* 21 U.S.C. §§ 603(a), 604-606. The FMIA prohibits the selling, transporting, offering for sale or transportation or receiving for transportation, in commerce, of meat or meat food products capable of use as human food that have not been inspected and passed by the USDA. 21 U.S.C. § 610(c).

15. The FMIA prohibits knowingly representing that any meat or meat food products have been inspected and passed, or exempted, when the meat or meat food products have not in fact been inspected and passed, or exempted. 21 U.S.C. § 611(b)(6).

16. *Adulteration and Misbranding.* The FMIA also prohibits any actions that are intended to cause or have the effect of causing meat or meat food products to be adulterated or misbranded. 21 U.S.C. § 610(d). It prohibits the selling, transporting, offering for sale or transportation or receiving for transportation, in commerce, of meat or meat food products capable of use as human food that that have been adulterated or misbranded. 21 U.S.C. § 610(c).

17. The FMIA prohibits, without authorization from the Secretary, the use of any official device, mark, or certificate, as well as the alteration, detachment, defacing, or destruction of any official device, mark, or certificate. 21 U.S.C. § 611(b)(2).

18. *Safe Handling of Food.* Regulations promulgated by the USDA require the use of safe handling instructions regarding handling and cooking for all uncooked meat and meat food products. 9 C.F.R. § 317.2(l).

The PPIA and Poultry Regulation

19. The PPIA grants the Secretary of Agriculture the power to regulate and inspect poultry and poultry products distributed in interstate or foreign commerce. 21 U.S.C. §§ 451, 452, and 455. Additionally, the Secretary of Agriculture may designate poultry operations and transactions wholly within a state governed by sections 1 through 4, 6 through 10, and 12 through 22 of the PPIA. *See* 21 U.S.C. § 454(c)(1); 9 C.F.R. § 381.221. The Secretary has so designated New York. 9 C.F.R. § 381.221.

20. *Inspection.* Section 6 of the PPIA requires inspectors to conduct both *ante-mortem* and *post-mortem* inspections of poultry in each official establishment processing poultry or poultry products for commerce. 21 U.S.C. § 455.

21. The PPIA prohibits the selling, transporting, offering for sale or transportation, or receiving for transportation, in commerce, of poultry products capable of use as human food that have not been inspected and passed by the USDA. 21 U.S.C. § 458(a)(2)(B).

22. The PPIA prohibits knowingly representing that any poultry products have been inspected and passed, or exempted, when the poultry products have not in fact been inspected and passed, or exempted. 21 U.S.C. § 458(c)(6).

23. Although the PPIA authorizes certain processing of poultry at a retail location to be exempt from USDA inspection, that exemption applies only so long as the poultry products are not adulterated or misbranded, and are sold to consumers in normal retail quantities. 21 U.S.C. §§ 454(c)(2), 464(a)(1); 9 C.F.R. § 381.10.

24. *Adulteration and Misbranding.* The PPIA also prohibits any actions that are intended to cause or have the effect of causing poultry products to be adulterated or misbranded. 21 U.S.C. § 458(a)(3). It prohibits the selling, transporting, offering for sale or transportation or receiving for transportation, in commerce, of poultry products capable of use as human food that have been adulterated or misbranded. 21 U.S.C. § 458(a)(2)(A).

25. The PPIA prohibits, without authorization from the Secretary, the use of any official device, mark, or certificate, as well as the alteration, detachment, defacing, or destruction of any official device, mark, or certificate. 21 U.S.C. § 458(c)(2).

26. *Safe Handling of Food.* Regulations promulgated by the USDA require the use of safe handling instructions regarding handling and cooking for all uncooked poultry products. 9 C.F.R. § 381.125(b).

DEFENDANTS' VIOLATIONS OF THE PPIA AND FMIA

27. Defendants operate a retail facility operating under the name Chung Shing Meats, Inc., at 19 Catherine Street, New York, New York 10038. Chung Shing was incorporated under New York law in June 2009.

28. Defendants do not operate under a grant of federal inspection to process meat or poultry products under the PPIA or FMIA.

29. On or about April 29, 2019 and May 2, 2019, Defendants, operating as New Chung Hing Meats, Inc. prepared and sold approximately fifty-two pounds of non-federally

inspected sliced beef and approximately thirty pounds of non-federally inspected pork baby ribs to a retailer for resale, in violation of 21 U.S.C. § 610(c). Defendants repackaged these meat products in containers bearing marks of federal inspection, causing the meat products to be misbranded in violation of 21 U.S.C. § 610(c), (d). These meat products were not otherwise exempt from inspection.

30. On June 26, 2019, a member of the USDA's Food Safety and Inspection Service ("FSIS") discussed these violations with Wing Hong Cheung, acting on behalf of New Chung Hing Meats Inc. Wing Hong Cheung signed a written statement in which he acknowledged that New Chung Hing Meats, Inc. had prepared, offered for sale, and sold the sliced beef meat and pork baby ribs in question to a retailer. Wing Hong Cheung also acknowledged that New Chung Hing Meats, Inc. repackaged the sliced beef meat and pork baby ribs into reused containers bearing marks of federal inspection 21342 (originally labeled for pork spare ribs) and 31965 (originally labeled for pork back ribs).

31. On or about April 6, 2018, Defendants offered for sale and transportation, and sold, approximately nine pounds of non-federally inspected beef shin meat that were capable of use as human food in violation of the FMIA. *See* 21 U.S.C. § 610(c).

32. Also on or about April 6, 2018, Defendants offered for sale and transportation, and sold, approximately twenty pounds of non-federally inspected beef bones that were capable of use as human food in violation of the FMIA. *See id.* Defendants repackaged these same beef bones into shipping containers bearing poultry exemption permit number 7875, labeled as Confucius Style Duckling, in violation of the FMIA and the PPIA. *See* 21 U.S.C. §§ 458(c)(2), 610(c)-(d), 611(b).

33. On April 6, 12, and 17, 2018, a member of FSIS discussed these violations with Tian Lun Feng, acting on behalf of Chung Shing. On April 17, 2018, Tian Lun Feng signed a written statement in which he acknowledged that Chung Shing had prepared, offered for sale, and sold the beef shin meat and beef bones in question to a retailer. Tian Lun Feng also acknowledged that Chung Shing repackaged the beef bones in a container bearing poultry exemption permit number 7875 labeled Confucius Style Duckling without authorization.

34. On June 4, 2018, the FSIS issued a Notice of Alleged Violation to Defendants concerning the FMIA and PPIA violations on April 6, 2018, which was sent to Defendants by U.S. certified mail.

35. In the Notice of Alleged Violation, the FSIS explained the violations found by FSIS and provided Defendants an opportunity to present additional evidence for the agency to consider prior to taking any legal action. In a letter dated July 5, 2018, Defendants, through counsel, acknowledged the April 6, 2018, violations.

36. The April and May 2019 and April 2018 violations were not one-off occurrences. To the contrary, FSIS inspectors have repeatedly caught Defendants violating the FMIA and PPIA.

37. For example, on or about June 28, 2017, Defendants prepared and sold approximately thirty pounds of non-federally inspected roast pork to a retailer for resale, in violation of 21 U.S.C. § 610(c). These meat products were not otherwise exempt from inspection. FSIS inspectors discovered this violation and sent Defendants a Notice of Warning for it on August 14, 2017.

38. In addition, on or about February 8, 2017, FSIS inspectors found that Defendants had prepared and sold approximately thirty-six pounds of non-federally inspected roast duck and

five pounds of non-federally inspected pork chops to a retailer for resale, in violation of 21 U.S.C. §§ 458(a) and 610(c). These meat and poultry products were not otherwise exempt from inspection. Also on or about February 8, 2017, Defendants repackaged forty pounds of beef brisket into containers bearing a mark of federal poultry inspection, causing the beef brisket to become misbranded in violation of 21 U.S.C. § 611(b). FSIS inspectors discovered this violation and sent Defendants a Notice of Warning for it on April 3, 2017.

39. On or about March 21, 2016, FSIS inspectors found that Defendants prepared and sold approximately one hundred and eight pounds of non-federally inspected roast duck to a retailer for resale, in violation of 21 U.S.C. § 458(a). These poultry products were not otherwise exempt from inspection. FSIS inspectors discovered this violation and sent Defendants a Notice of Warning for it on May 9, 2016.

40. On or about September 30, 2010, FSIS inspectors found that Defendants prepared and sold approximately seventy-two pounds of non-federally inspected roast duck to a retailer for resale, in violation of 21 U.S.C. § 458(a). These poultry products were not otherwise exempt from inspection. FSIS inspectors discovered this violation and sent Defendants a Notice of Warning for it on January 7, 2011.

41. On or about June 16, 2009, FSIS inspectors found that Defendants, except for Chung Shing and operating as Cheong Hing Meats & Seafood, Inc., prepared and sold approximately forty-five pounds of non-federally inspected Silkie Chickens to retail customers, in violation of 21 U.S.C. § 458(a). These poultry products were not otherwise exempt from inspection. FSIS inspectors discovered this violation and sent Defendants a Notice of Warning for it on August 6, 2009.

42. On or about September 20, 2006, FSIS inspectors found that Defendants, except for Chung Shing and operating as Cheong Hing Meats & Seafood, Inc., prepared and sold approximately sixty-five pounds of non-federally inspected beef, pork, and poultry products to a retailer for resale, in violation of 21 U.S.C. §§ 458(a) and 610(c). The meat and poultry products involved were not otherwise exempt from inspection. FSIS inspectors discovered this violation and sent Defendants a Notice of Warning for it on August 20, 2007.

43. Upon information and belief, Defendants have violated the FMIA and PPIA by processing, offering for sale, and selling uninspected and misbranded meat and poultry products at other times not observed by FSIS inspectors.

COUNT 1:
RELIEF FOR VIOLATIONS OF FMIA

(21 U.S.C § 674)

44. The United States repeats and realleges the allegations in paragraphs 1 through 40 with the same force and effect as if set forth fully herein.

45. Section 674 of the FMIA, 21 U.S.C. § 674, provides that “[t]he United States district courts . . . are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this chapter, and shall have jurisdiction in all other kinds of cases arising under this chapter, except as provided in section 607(e) of this title.”

46. On or about April 29, 2019, May 2, 2019, April 6, 2018, June 28, 2017, February 8, 2017, and September 20, 2006, Defendants prepared and sold, or caused to be transported and offered for sale, meat products in violation of 21 U.S.C. §§ 610(c)-(d) and 611(b) because the meat products were not inspected and passed as required by the FMIA, and some of the meat products were misbranded.

47. Such preparation and sale of meat products did not occur under any exemption from the FMIA, including but not limited to, the exemption for the custom slaughter and processing of meat and meat food products under section 23(a) of the FMIA. *See* 21 U.S.C. § 623(a).

48. Accordingly, plaintiff United States of America is entitled to a permanent injunction to enforce the FMIA, and to prevent and restrain Defendants from continuing to violate the FMIA.

49. Additionally, pursuant to the Court's equitable powers, the United States is entitled to an order requiring Defendants to disgorge all profits on transactions violating the FMIA that occurred within the five years preceding the filing of this Complaint.

COUNT II:
RELIEF FOR VIOLATIONS OF PPIA

(21 U.S.C § 467c)

50. The United States repeats and realleges the allegations in paragraphs 1 through 48 with the same force and effect as if set forth fully herein.

51. Section 467c of the PPIA, 21 U.S.C. § 467c, provides that “[t]he United States district courts . . . are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this chapter, and shall have jurisdiction in all other kinds of cases arising under this chapter, except as provided in section 457(d) or 467 of this title.”

52. On or about April 6, 2018, defendants prepared and sold, or offered for sale, meat products misbranded as poultry products in violation of 21 U.S.C. § 458(c)(2) because the meat products were mislabeled as poultry products bearing poultry exemption permit number 7875.

53. On or about February 8, 2017, March 21, 2016, September 30, 2010, June 16, 2009, and September 20, 2006, Defendants prepared and sold, or caused to be transported and

offered for sale, poultry products in violation of 21 U.S.C. § 458(a) because the poultry products were not inspected and passed as required by the PPIA.

54. Such sale of meat products did not occur under any exemption from the PPIA, including but not limited to, the exemption for the custom slaughter and processing of poultry products under section 464 of the PPIA. *See* 21 U.S.C. § 464(c).

55. Accordingly, plaintiff United States of America is entitled to a permanent injunction to enforce the PPIA, and to prevent and restrain Defendants from continuing to violate the PPIA.

56. Additionally, pursuant to the Court's equitable powers, the United States is entitled to an order requiring Defendants to disgorge all profits on transactions violating the PPIA that occurred within the five years preceding the filing of this Complaint.

REQUEST FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court grant the following relief:

- a. A permanent injunction compelling Defendants, and all of their directors, officers, agents, servants, representatives, employees, successors, or assigns, and any and all persons in active concert or participation with them, directly or indirectly, to comply with all applicable requirements of the FMIA and PPIA, as well as the regulations promulgated thereunder, including but not limited to those requirements and regulations:
 - i. prohibiting the processing, offering for sale or transportation, and sale of uninspected meat, meat products, poultry, and poultry products required to be inspected and passed by the USDA; and

- ii. prohibiting the processing, offering for sale or transportation, and sale of misbranded meat, meat products, poultry, and poultry products;
- b. An order requiring Defendants to disgorge all profits received from all violations of the PPIA and FMIA in the five years preceding the date of this Complaint;
- c. An order granting the United States its costs and disbursements of this action and such other and further relief as this Court deems just and proper.

Dated: December 23, 2019
New York, New York

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